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3:98cv886 Portland v. Union Pacific RR Co, et al

U.S. District Court
U.S. District Court for the District of Oregon (Portland)

CIVIL DOCKET FOR CASE #: 98-CV-886

Portland v. Union Pacific RR Co, et al	Filed: 07/17/98
Assigned to: Honorable Owen M Panner	Jury demand: Plaintiff
Demand: \$0,000	Nature of Suit: 240
Lead Docket: None	Jurisdiction: Federal Question
Dkt # in Multnomah County : is 9807-04878	

Cause: 28:1441 Petition for Removal- Tort/Non-Motor Vehicle

PORT OF PORTLAND, a Port
District & Political
Subdivision of the State of
Oregon
Plaintiff

Eric R Todderud
[COR LD NTC]
Heller Ehrman White & Mc
Auliffe
200 SW Market
Suite 1750
Portland, OR 97201-5718
503-227-7400
FTS 241-0950

Svend A Brandt-Erichsen
FTS 447-0849
[COR]
William D Maer
[COR]
Heller Ehrman White & Mc
Auliffe
701 5th Avenue
6100 Columbia Center
Seattle, WA 98104-7098
206-447-0900
FTS 447-0849

v.

UNION PACIFIC RAILROAD COMPANY,
a Utah corporation
Defendant

Robert E Maloney, Jr
226-6151
[COR LD NTC]
Donald H Pyle
FTS 224-0388
503-226-6151
[COR]
Lee C Nusich
[COR]

Lane Powell Spears Lubersky LLP
601 SW Second Avenue
Suite 2100

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Portland, OR 97204-3158
(503) 778-2100
FTS 778-2200

=====

UNION PACIFIC RAILROAD COMPANY
Counter-claimant

Robert E Maloney, Jr
226-6151
[COR LD NTC]
Donald H Pyle
FTS 224-0388
503-226-6151
[COR]
Lee C Nusich
[COR]
Lane Powell Spears Lubersky LLP
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PORT OF PORTLAND
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7/17/98	1	NOTICE OF REMOVAL by Defendant Union Pacific RR Co (Cause of Action: 28:1441tn) from Multnomah County Circuit Court Receipt # 404681 (kirk) [Entry date 07/20/98]
7/17/98	2	ORDER Discovery Schedule: Discovery due 11/16/98 & Pretrial order due 12/14/98 (kirk) [Entry date 07/20/98]
8/6/98	3	STIPULATED MOTION by Defendant Union Pacific RR Co FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT (ljb) [Entry date 08/07/98]
8/7/98	4	RECORD OF ORDER by Judge Janice M. Stewart GRANTING Stipulated MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO COMPLAINT [3-1]; deadline reset to 8/14/98 for Union Pacific RR Co (counsel notified) (ljb) [Entry date 08/10/98]

8/7/98 7 CERTIFICATE OF SERVICE of application [6-1], application [5-1] by Plaintiff Port of Portland; no Consent to Magistrate on docket as of 8/7/98 (ljb) [Entry date 08/10/98]

8/10/98 5 APPLICATION FOR SPECIAL ADMISSION PRO HAC VICE by attorney Svend A. Brandt-Erichsen; Local Counsel: Eric R. Todderud representing Plaintiff Port of Portland ; Fee paid, receipt # 405187; Approved 8/10/98 by Judge Janice M. Stewart (counsel notified) (ljb)

8/10/98 6 APPLICATION FOR SPECIAL ADMISSION PRO HAC VICE by attorney William D. Maer; Local Counsel: Eric R. Todderud representing Plaintiff Port of Portland ; Fee paid, receipt # 405186; Approved 8/10/98 by Judge Janice M. Stewart (counsel notified) (ljb)

8/12/98 8 MOTION by Defendant Union Pacific RR Co TO DISMISS Oral Argument Requested (ljb) [Entry date 08/13/98]

8/12/98 9 MEMORANDUM OF LAW IN SUPPORT by Defendant Union Pacific RR Co of MOTION TO DISMISS [8-1] (ljb) [Entry date 08/13/98]

8/13/98 10 RECORD OF ORDER by Judge Janice M. Stewart SETTING Defendants MOTION TO DISMISS [8-1] on oral argument calendar at 11:00am on 9/14/98 (counsel notified) (ljb)

8/26/98 11 MEMORANDUM by Plaintiff Port of Portland IN OPPOSITION TO MOTION TO DISMISS [8-1] Reply due 9/9/98 (ljb) [Entry date 08/27/98]

8/26/98 12 CERTIFICATE OF SERVICE of memorandum [11-1] by Plaintiff Port of Portland (ljb) [Entry date 08/27/98]

8/27/98 13 ATTACHEMENT TO PORT OF PORTLAND'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS as to Port of Portland (ljb) [Entry date 08/28/98]

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9/8/98 14 REPLY MEMORANDUM by Defendant Union Pacific RR Co IN SUPPORT OF RULE 12 MOTIONS [8-1] (ljb) [Entry date 09/09/98]

9/14/98 15 RECORD OF PROCEEDINGS on Hearing on Defendants Motion to Dismiss before Judge Janice M. Stewart; MOTION TO DISMISS [8-1] taken under advisement as of 9/14/98; parties to

submit supplemental briefing on the private right of action issue by 10/2/98. (counsel notified) Court Rptr Tape #373, 374 (ljb) [Entry date 09/15/98]

10/2/98 16 SUPPLEMENTAL MEMORANDUM RE PRIVATE RIGHT OF ACTION UNDER ORS 468B.310 by Plaintiff Port of Portland (ljb) [Entry date 10/05/98]

10/2/98 17 SUPPLEMENTAL MEMORANDUM IN SUPPORT by Defendant Union Pacific RR Co of MOTION TO DISMISS [8-1] (ljb) [Entry date 10/05/98]

10/2/98 18 CERTIFICATE OF SERVICE of memorandum [16-1] by Plaintiff Port of Portland (ljb) [Entry date 10/05/98]

10/15/98 19 FINDINGS AND RECOMMENDATION by Judge Janice M. Stewart MOTION TO DISMISS [8-1] by Union Pacific RR Co SHOULD BE GRANTED as to the Port's 8th claim for relief, DENIED as to the 1st, 4th, 5th & 7th claims for relief & GRANTED in part & DENIED in part as to the 6th claim for relief s/ ST 10/15/98 (cc: Counsel notified) Due date for filing objections: 11/2/98 Due date for response to objections: 11/20/98 (tely) [Entry date 10/16/98]

10/28/98 20 OBJECTION to FINDINGS AND RECOMMENDATION by Defendant Union Pacific RR Co [19-1] (ljb) [Entry date 10/29/98]

11/10/98 21 RECORD OF ORDER by Judge Janice M. Stewart; Rule 16 Telephone Conference set for 10:00am on 11/12/98 (counsel notified) (ljb) [Entry date 11/12/98]

11/12/98 22 RECORD OF PROCEEDINGS (Telephone Rule 16 Conference) before Judge Janice M. Stewart; discovery due 4/30/99; pretrial order set for 9/1/99; plaintiffs dispositive motions due 4/16/99; defendant cross motions and plaintiffs Response to dispositive motions due 5/14/99; responses to cross motions by defendants and replies due 6/4/99; reply to cross motion due 6/16/99; taking dispositive motions under advisement on 6/21/99; written consents to Magistrate, if any, due 6/21/99; exchange of expert disclosure statement due 8/18/99; Pretrial documents due 9/24/99; objections to pretrial submissions due 9/29/99; Final pretrial conference set for 1:30pm on 10/1/99; 8 day jury trial set for 9:30am on 10/5/99 in Portland, (counsel notified) (ljb) [Entry date 11/13/98]

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11/13/98 23 JURY TRIAL MANAGEMENT ORDER by Judge Janice M. Stewart; pretrial conference set for 1:30pm on 10/1/99; 10 day jury trial set for 9:30am on 10/5/99 Signed 11/13/98 (counsel notified) (ljb) [Entry date 11/16/98]

11/19/98 24 PORT OF PORTLAND'S RESPONSE TO UP'S OBJECTIONS to Findings and Recommendation [20-1][8-1][19-1] by Plaintiff Port of Portland (ljb)

11/19/98 25 CERTIFICATE OF SERVICE of response [24-1] by Plaintiff Port of Portland (ljb)

11/19/98 26 MINUTES OF ORDER by Judge Janice M. Stewart REFERRING Findings and Recommendation filed 10/15/98 [24-1], [20-1], [19-1] to Honorable Owen M. Panner (ljb) [Entry date 11/20/98]

12/28/98 27 ORDER by Honorable Owen M. Panner: ADOPTING Findings & Recommendations that Defendants MOTION TO DISMISS [8-1] by Union Pacific RR Co SHOULD BE GRANTED to the Port's 8th claim for relief, DENIED as to the 1st,4th,5th & 7th claims for relief & GRANTED in part & DENIED in part as to the 6th claim for relief [19-1]; Objection [20-1]; Response [24-1] Signed 12/18/98 (counsel notified) (kirk) [Entry date 12/30/98]

3/31/99 28 ANSWER by Defendant Union Pacific RR Co to complaint [1-2] (tely) [Entry date 04/02/99]

4/13/99 29 MOTION by Defendant TO EXTEND DISCOVERY CUT-OFF AND EXTEND DEADLINE FOR FILING DISPOSITIVE MOTIONS (Expedited Hearing Requested) (kirk) [Entry date 04/14/99]

4/14/99 30 RECORD OF ORDER by Judge Janice M. Stewart: GRANTING MOTION TO EXTEND DISCOVERY CUT-OFF AND EXTEND DEADLINE FOR FILING DISPOSITIVE MOTIONS [29-1]; ORDER resetting the following dates: Discovery due 6/15/99; Dispositive motions due 6/1/99; Response to dispositive motions due 6/30/99; Reply to response due 7/21/99; Dispositive Motions will be taken under advisement on 8/9/99 (counsel notified) (kirk) [Entry date 04/15/99]

5/28/99 31 MOTION by Plaintiff FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B Oral Argument Requested (kirk)

5/28/99 32 MEMORANDUM IN SUPPORT by Plaintiff of MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] (kirk)

5/28/99 33 CONCISE STATEMENT OF MATERIAL FACTS by Plaintiff in support of MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] (kirk)

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- 5/28/99 34 AFFIDAVIT by Plaintiff of Svend A. Brandt-Erichsen in Support of MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] (kirk)
- 5/28/99 35 AFFIDAVIT by Plaintiff of Fay Malloy in Support of MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] (kirk)
- 5/28/99 36 AFFIDAVIT by Plaintiff of Padraic Quinn in Support of MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] (kirk)
- 5/28/99 37 AFFIDAVIT by Plaintiff of Matthew G. Dalton in Support of MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] (kirk)
- 5/28/99 38 CERTIFICATE OF SERVICE of affidavit [37-1], affidavit [36-1], affidavit [35-1], affidavit [34-1], statement [33-1], memorandum [32-1], MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] by Plaintiff (kirk)
- 6/3/99 39 RECORD OF ORDER by Judge Janice M. Stewart: SETTING Port of Portlands MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] on the Oral Argument Calendar at 1:30pm on 8/9/99 (counsel notified) (kirk) [Entry date 06/04/99]
- 6/14/99 40 MOTION by Defendant TO EXTEND DISCOVERY CUTOFF AND OTHER DEADLINES Oral Argument Requested (kirk) [Entry date 06/15/99]
- 6/14/99 41 MEMORANDUM IN SUPPORT by Defendant Union Pacific RR Co of MOTION TO EXTEND DISCOVERY CUTOFF AND OTHER DEADLINES [40-1] (kirk) [Entry date 06/15/99]
- 6/14/99 42 AFFIDAVIT by Defendant of Lee C. Nusich in Support of MOTION TO EXTEND DISCOVERY CUTOFF AND OTHER DEADLINES [40-1] (kirk) [Entry date 06/15/99]
- 6/22/99 43 OPPOSITION by Plaintiff to Defendants MOTION TO EXTEND DISCOVERY CUTOFF AND OTHER DEADLINES [40-1]; Reply due 7/6/99 (kirk) [Entry date 06/23/99]
- 6/22/99 44 DECLARATION by Plaintiff of William D. Maer in Opposition to Defendants MOTION TO EXTEND DISCOVERY CUTOFF AND OTHER

DEADLINES [40-1] (kirk) [Entry date 06/23/99]

6/22/99 45 CERTIFICATE OF SERVICE of declaration [44-1], memorandum [43-1] by Plaintiff (kirk) [Entry date 06/23/99]

6/30/99 46 MOTION by Defendant TO AMEND ANSWER & COUNTERCLAIM (kirk) [Entry date 07/01/99]

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6/30/99 47 CROSS-MOTION by Defendant FOR SUMMARY JUDGMENT RE CLAIMS Oral Argument Requested (kirk) [Entry date 07/01/99]

6/30/99 48 MEMORANDUM by Defendant IN OPPOSITION to Plaintiffs MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1]; Reply due 7/14/99 (Document entitled: Memorandum in Opposition to Plaintiffs Motion for Summary Judgment & in Support of Defendants Cross-Motion for Summary Judgment) (kirk) [Entry date 07/01/99]

6/30/99 48 MEMORANDUM IN SUPPORT by Defendant of its MOTION FOR SUMMARY JUDGMENT RE CLAIMS [47-1] (Document entitled: Memorandum in Opposition to Plaintiffs Motion for Summary Judgment & in Support of Defendants Cross-Motion for Summary Judgment) (kirk) [Entry date 07/01/99]

6/30/99 49 RESPONSE by Defendant to Port of Portland's Concise Statement of Material Facts (kirk) [Entry date 07/01/99]

6/30/99 50 MOTION by Defendant TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY OF MATTHEW G. DALTON Oral Argument Requested (kirk) [Entry date 07/01/99]

6/30/99 51 MEMORANDUM IN SUPPORT by Defendant of MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY OF MATTHEW G. DALTON [50-1] (kirk) [Entry date 07/01/99]

6/30/99 52 AFFIDAVIT by Defendant of Shawn Leppert in Support of MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY MATTHEW G. DALTON [50-1] & in Opposition to Plaintiffs MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] (kirk) [Entry date 07/01/99]

6/30/99 53 AFFIDAVIT by Defendant of Lee C. Nusich in Support of MOTION FOR SUMMARY JUDGMENT RE CLAIMS [47-1] & in Opposition to Plaintiffs MOTION FOR SUMMARY JUDGMENT RE

CLAIMS UNDER ORS CHS.465 & 468B [31-1] (kirk)
[Entry date 07/01/99]

- 6/30/99 54 AFFIDAVIT by Defendant of Hoyt Sutphin in Opposition to
MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 &
468B [31-1] (kirk) [Entry date 07/01/99]
- 6/30/99 55 AFFIDAVIT by Defendant of R.D. Markworth in Opposition to
Port of Portland's MOTION FOR SUMMARY JUDGMENT RE CLAIMS
UNDER ORS CHS.465 & 468B [31-1] (kirk) [Entry date 07/01/99]

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- 7/1/99 56 RECORD OF PROCEEDINGS (Telephone Oral Argument) before
Judge Janice M. Stewart: GRANTING Defendants MOTION TO
EXTEND DISCOVERY CUTOFF AND OTHER DEADLINES [40-1];
Discovery due 7/30/99 only as to discovery regarding
Plaintiffs demolition near the pipeline in 1970-71; ORDER
SETTING the following motions schedule: MOTION TO STRIKE &
TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY OF MATTHEW
G. DALTON [50-1]; & MOTION FOR SUMMARY JUDGMENT RE CLAIMS
[47-1]; & MOTION TO AMEND ANSWER & COUNTERCLAIM [46-1];
Responses due 7/21/99; Replies due 8/4/99 & Oral Argument
will be held at 1:30pm on 8/9/99 (See formal minute order)
(counsel notified) (kirk) [Entry date 07/02/99]
- 7/6/99 57 AFFIDAVIT by Defendant of Shawn Leppert in Opposition to
Plaintiffs MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS
CHS.465 & 468B [31-1], & in Support of Defendants MOTION TO
STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY
OF MATTHEW G. DALTON [50-1] (kirk) [Entry date 07/07/99]
- 7/21/99 58 RESPONSE by Plaintiff to Union Pacific's Statement of Other
Relevant Facts (kirk)
- 7/21/99 59 MEMORANDUM by Plaintiff IN OPPOSITION to Union Pacific's
MOTION TO AMEND ANSWER & COUNTERCLAIM [46-1]; Reply due
8/4/99 (kirk)
- 7/21/99 60 MEMORANDUM by Plaintiff IN OPPOSITION to Union Pacific's

MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY OF MATTHEW G. DALTON [50-1]; Reply due 8/4/99 (kirk)

7/21/99 61 MEMORANDUM IN REPLY by Plaintiff Re: Plaintiffs MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] (Document entitled: Memorandum in Reply re Port's Summary Judgment Motion & in Opposition to Union Pacific's Summary Judgment Motions) (kirk)

7/21/99 61 MEMORANDUM by Plaintiff IN OPPOSITION to Union Pacific's MOTION FOR SUMMARY JUDGMENT RE CLAIMS [47-1]; Reply due 8/4/99 (Document entitled: Memorandum in Reply re Port's Summary Judgment Motion & in Opposition to Union Pacific's Summary Judgment Motions) (kirk)

7/21/99 62 SUPPLEMENTAL AFFIDAVIT by Plaintiff of Matthew G. Dalton in Support of Port of Portland's MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] (kirk)

7/21/99 63 SUPPLEMENTAL AFFIDAVIT by Plaintiff of Svend A. Brandt-Erichsen (kirk)

7/21/99 64 CERTIFICATE OF SERVICE of affidavit [63-1], affidavit [62-1], memorandum [61-1], MOTION reply [61-1], memorandum [60-1], memorandum [59-1], response [58-1] by Plaintiff (kirk)

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7/21/99 65 RECORD OF PROCEEDINGS (Telephone Conference Call) before Judge Janice M. Stewart: ORDER resetting the Oral Argument to 8/23/99 at 1:30pm on the following motions: MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY OF MATTHEW G. DALTON [50-1]; MOTION FOR SUMMARY JUDGMENT RE CLAIMS [47-1]; MOTION TO AMEND ANSWER & COUNTERCLAIM [46-1]; MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1]; ORDER setting the following deadlines: 10/1/99 Exchange of Expert Disclosure Statements due; 11/30/99 Close of expert discovery; Discovery due 7/30/99; Pretrial Order due 11/30/99; Pretrial documents due 12/16/99; Objections to Pretrial documents due 12/21/99; Final Pretrial Conference set 1/4/00 at 9:00am before Judge Panter in Chambers & 8-Day Jury Trial set 1/11/00 at 9:30am before Judge Panter ; (See formal minute order) (counsel notified) (kirk)

7/21/99 65 RECORD OF PROCEEDINGS (Telephone conference call) before Judge Janice M. Stewart: ORDER setting the Final Pretrial Conference at 9:00am on 1/4/00; & 8-Day Jury Trial set for 9:30am on 1/11/00 in Portland before Judge Panner (counsel notified) (kirk)

7/23/99 66 ORDER ESTABLISHING TRIAL DATE AND PROCEDURES; 8 day jury trial set for 1/11/00 at 9:30; pretrial conference set for 1/4/00 at 9:00am. by Honorable Owen M. Panner Signed 7/23/99 (counsel notified) (ljb) [Entry date 07/26/99]

8/3/99 67 REPLY MEMORANDUM by Defendants in Support of Defendants MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY OF MATTHEW G. DALTON [50-1] (kirk) [Entry date 08/04/99]

8/3/99 68 SUPPLEMENTAL DECLARATION by Defendant of Shawn Leppert in Support of MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY MATTHEW G. DALTON [50-1] (kirk) [Entry date 08/04/99]

8/4/99 69 REPLY MEMORANDUM IN SUPPORT by Defendant in Support of Cross-MOTION FOR SUMMARY JUDGMENT RE CLAIMS [47-1] (kirk) [Entry date 08/05/99]

8/4/99 70 AFFIDAVIT by Defendant of Timothy R. Harmon in Support of UPRR's Reply Memorandum in Support of Cross-Motion for Summary Judgment [69-1] (kirk) [Entry date 08/05/99]

8/4/99 71 AFFIDAVIT by Defendant of Beverly C. Overstreet in Support of UPRR's Reply Memorandum in Support of Cross-Motion for Summary Judgment [69-1] (kirk) [Entry date 08/05/99]

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8/23/99 72 RECORD OF PROCEEDINGS (Oral Argument) before Judge Janice M. Stewart: ORDER TAKING UNDER ADVISEMENT on 8/23/99 the following motions: Defendants MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY OF MATTHEW G. DALTON [50-1]; Defendants Cross-MOTION FOR SUMMARY JUDGMENT RE CLAIMS [47-1]; Plaintiffs MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1]; GRANTING in Part & DENYING in Part Defendants MOTION TO AMEND ANSWER & COUNTERCLAIM [46-1]; ORDER resetting the exchange of expert

disclosure deadlines to 11/1/99; all other case deadlines remain unchanged; (See formal minute order)(counsel notified) Court Rptr Deb Wilhelm (kirk)
[Entry date 08/24/99]

8/26/99 73 AMENDED ANSWER [1-2] and COUNTERCLAIM by Defendant Union Pacific RR Co against Plaintiff Port of Portland (kirk)
[Entry date 08/30/99]

9/30/99 74 FINDINGS AND RECOMMENDATION by Judge Janice M. Stewart: MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY OF MATTHEW G. DALTON [50-1] by Union Pacific RR Co SHOULD BE DENIED; MOTION FOR SUMMARY JUDGMENT RE CLAIMS [47-1] by Union Pacific RR Co SHOULD BE GRANTED as to the First, Fourth & Fifth Claims; & MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] by Port of Portland SHOULD BE GRANTED IN PART as to that portion of the Second Claim arising from contamination at the eastern edge of Terminal 4 adjacent to Defendants tank farm facility & DENIED as to all other respects; s/ ST 9/30/99 (cc: Counsel notified) (See formal 42-Page F&R) Due date for filing objections: 10/20/99; Due date for response to objections: 11/5/99 (kirk) [Entry date 10/01/99]

10/12/99 75 PLAINTIFFS ANSWER TO COUNTER-CLAIM [73-2] of Defendant (kirk)
[Entry date 10/13/99]

10/13/99 76 MOTION by Defendant Union Pacific RR Co TO AMEND ANSWER & COUNTERCLAIM Oral Argument Requested (tely)
[Entry date 10/14/99]

10/13/99 77 MEMORANDUM IN SUPPORT by Defendant Union Pacific RR Co of MOTION TO AMEND ANSWER & COUNTERCLAIM [76-1] (tely)
[Entry date 10/14/99]

10/13/99 78 AFFIDAVIT by Defendant Union Pacific RR Co of Lee C Nusich re: MOTION TO AMEND ANSWER & COUNTERCLAIM [76-1] (tely)
[Entry date 10/14/99]

10/20/99 79 OBJECTIONS to Magistrates FINDINGS AND RECOMMENDATIONS dated 9/30/99 by Plaintiff [74-1] (kirk)
[Entry date 10/21/99]

10/20/99 80 CERTIFICATE OF SERVICE of objection [79-1] by Plaintiff (kirk) [Entry date 10/21/99]

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10/20/99 81 RECORD OF ORDER by Judge Janice M. Stewart: SETTING Defendants MOTION TO AMEND ANSWER & COUNTERCLAIM [76-1] for Oral Argument at 1:30pm on 11/15/99 (counsel notified) (kirk) [Entry date 10/22/99]

10/25/99 82 MEMORANDUM by Plaintiff IN OPPOSITION to Defendants Second MOTION TO AMEND ANSWER & COUNTERCLAIM [76-1]; Reply due 11/8/99 (kirk) [Entry date 10/26/99]

10/25/99 83 CERTIFICATE OF SERVICE of memorandum [82-1] by Plaintiff (kirk) [Entry date 10/26/99]

10/27/99 84 MOTION by Defendant TO STRIKE OR EXCLUDE EVIDENCE Oral Argument Requested (Expedited Hearing Requested) (kirk) [Entry date 10/28/99]

10/27/99 85 MEMORANDUM IN SUPPORT by Defendant of MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] (kirk) [Entry date 10/28/99]

10/27/99 86 AFFIDAVIT by Defendant of Lee C. Nusich in Support of MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] (kirk) [Entry date 10/28/99]

10/27/99 87 SUPPLEMENTAL AFFIDAVIT by Defendant of Lee C. Nusich in Support of MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] (kirk) [Entry date 10/28/99]

10/27/99 88 AFFIDAVIT by Defendant of Hoyt Sutphin in support of MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] (kirk) [Entry date 10/28/99]

10/27/99 89 AFFIDAVIT by Defendant of Beverly C. Overstreet in Support of MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] (kirk) [Entry date 10/28/99]

10/28/99 90 RECORD OF ORDER by Judge Janice M. Stewart: RESETTING Defendants MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] on the Oral Argument Calendar at 1:30pm on 11/15/99; Plaintiff to file a response by 11/10/99 (counsel notified) (kirk) [Entry date 11/01/99]

10/29/99 91 REPLY IN SUPPORT by Defendant of MOTION TO AMEND ANSWER & COUNTERCLAIM [76-1] (kirk) [Entry date 11/01/99]

11/5/99 92 RESPONSE TO OBJECTIONS to Findings and Recommendation of 9/30/99 [79-1] [74-1] by Defendant Union Pacific RR Co (kirk) [Entry date 11/08/99]

11/9/99 93 MINUTES OF ORDER by Judge Janice M. Stewart: REFERRING Findings and Recommendation [92-1][79-1][74-1] to Honorable Owen M. Panner; Objections have been filed (kirk)

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11/10/99 94 MEMORANDUM by Plaintiff IN OPPOSITION to MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1]; Reply due 11/24/99 (kirk) [Entry date 11/15/99]

11/10/99 95 AFFIDAVIT by Plaintiff of Padraic Quinn in Opposition to MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] (kirk) [Entry date 11/15/99]

11/10/99 96 DECLARATION by Plaintiff of William D. Maer in Opposition to Defendants MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] (kirk) [Entry date 11/15/99]

11/10/99 97 CERTIFICATE OF SERVICE of declaration [96-1], affidavit [95-1], memorandum [94-1] by Plaintiff (kirk) [Entry date 11/15/99]

11/12/99 98 REPLY MEMORANDUM IN SUPPORT by Defendant of MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] (kirk) [Entry date 11/15/99]

11/12/99 99 AFFIDAVIT by Defendant of Timothy R. Harmon in Support of Reply Memorandum in Support of Motion to Strike or Exclude [98-1] (kirk) [Entry date 11/15/99]

11/15/99 100 RECORD OF PROCEEDINGS before Judge Janice M. Stewart: TAKING UNDER ADVISEMENT on 11/15/99 Defendants MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] & MOTION TO AMEND ANSWER & COUNTERCLAIM [76-1] (counsel notified) Court Rptr : Tape 464 & 465 (kirk) [Entry date 11/17/99]

11/18/99 101 OPINION AND ORDER: DENYING Defendants MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1], & DENYING Defendants MOTION TO AMEND ANSWER & COUNTERCLAIM [76-1]; Terminal 4 Uplands & sediment contamination claims are bifurcated & a court trail for the Terminal 4 Uplands claim will begin 1/11/00; A trial date for the sediments contamination claim will be set at a scheduling conference to be held after the conclusion for the Terminal 4 Uplands contamination trial; Findings of the first trial will be binding on the parties of the second trial; Signed 11/18/99 by Judge Janice Stewart (microfilmed 11/18/99)(counsel notified) (kirk) [Entry date 11/19/99]

11/18/99 101 RECORD OF OPINION & ORDER by Judge Janice M. Stewart Resetting before the Honorable Owen M. Panner an 8-Day Court Trial at 9:30am on 1/11/00 in Portland (kirk) [Entry date 11/19/99]

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11/30/99 102 ORDER by Honorable Owen M. Panner: ADOPTING Magistrate Judge Stewart's F&R that MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & OF MATTHEW G. DALTON [50-1] by Union Pacific RR Co SHOULD DENIED; MOTION FOR SUMMARY JUDGMENT RE CLAIMS [47-1] by Union Pacific RR Co SHOULD BE GRANTED as to the First, Fourth & Fifth Claims; & MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] by Port of Portland SHOULD BE GRANTED IN PART as to that portion of the Second Claim arising from contamination at the eastern edge of Terminal 4 adjacent to Defendants tank farm facility & DENIED as to all other respects [74-1][79-1][92-1]; DENYING MOTION TO STRIKE & TO EXCLUDE PORTIONS OF THE AFFIDAVIT & TESTIMONY OF MATTHEW G. DALTON [50-1]; GRANTING MOTION FOR SUMMARY JUDGMENT RE CLAIMS [47-1]; GRANTING MOTION FOR SUMMARY JUDGMENT RE CLAIMS UNDER ORS CHS.465 & 468B [31-1] Signed 11/30/99 (See formal 2-Page Order) (counsel notified) (kirk) [Entry date 12/01/99]

11/30/99 -- LODGED PRETRIAL ORDER filed by Plaintiff & Defendant (kirk) [Entry date 12/01/99]

12/2/99 103 RECORD OF ORDER by Judge Janice M. Stewart: CASE REASSIGNED to Honorable Owen M. Panner for all further proceedings (counsel notified) (kirk)

12/27/99 104 TRIAL BRIEF by Defendant (kirk) [Entry date 12/28/99]

12/27/99 105 AFFIDAVIT by Defendant Union Pacific RR Co of Shawn Leppert IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [31-1] AND IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE [84] (Not an original signature). (tomg) [Entry date 12/28/99] [Edit date 12/29/99]

12/27/99 106 AFFIDAVIT by Defendant Union Pacific RR Co of Hoyt Sutphin IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [31-1] (Not an original signature) (tomg) [Entry date 12/28/99] [Edit date 12/29/99]

12/27/99 107 SUPPLEMENTAL DECLARATION by Defendant Union Pacific RR Co of Shawn Leppert IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE OR EXCLUDE EVIDENCE [84-1] (Not an original signature) (tomg) [Entry date 12/28/99] [Edit date 12/29/99]

12/27/99 108 EXPERT WITNESS DISCLOSURE STATEMENT for Shawn Leppert filed by Defendant Union Pacific RR Co (Not an original signature) (tomg) [Entry date 12/28/99] [Edit date 12/29/99]

12/27/99 109 EXPERT WITNESS DISCLOSURE STATEMENT for Hoyt Sutphin filed by Defendant Union Pacific RR Co (Not an original signature) (tomg) [Entry date 12/28/99] [Edit date 12/29/99]

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12/27/99 110 EXPERT WITNESS DISCLOSURE STATEMENT for Raymond Taggart filed by Defendant Union Pacific RR Co (Not an original signature) (tomg) [Entry date 12/28/99] [Edit date 12/29/99]

12/27/99 111 EXPERT WITNESS DISCLOSURE STATEMENT for Howard C. Merchant filed by Defendant Union Pacific RR Co (Not an original signature) (tomg) [Entry date 12/28/99] [Edit date 12/29/99]

12/27/99 112 PROPOSED FINDS OF FACT (With Index) submitted by Defendant Union Pacific RR Co (tomg) [Entry date 12/28/99]

12/27/99 113 WITNESS LIST by Defendant Union Pacific RR Co (tomg) [Entry date 12/28/99]

12/27/99 114 EXHIBIT LIST by Defendant Union Pacific RR Co (tomg) [Entry date 12/28/99]

12/27/99 115 PROPOSED CONCLUSIONS OF LAW submitted by Defendant Union Pacific RR Co (tomg) [Entry date 12/28/99]

12/28/99 116 TRIAL BRIEF by Plaintiff Port of Portland (tomg)

12/28/99 117 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW submitted by Plaintiff Port of Portland (tomg)

12/28/99 118 WITNESS LIST by Plaintiff Port of Portland (tomg)

12/28/99 119 EXPERT WITNESS DISCLOSURES filed by Plaintiff Port of

Portland (tomg)

12/28/99 120 EXHIBIT INDEX by Plaintiff Port of Portland (tomg)

12/28/99 121 CERTIFICATE OF SERVICE of exhibits list [120-1], witness statement [119-1], witness list [118-1], proposed documents [117-1], trial memorandum [116-1] by Plaintiff Port of Portland (tomg)

12/28/99 122 EXPERT WITNESS DISCLOSURE STATEMENT for Raymond Taggart FILED by Defendant Union Pacific RR Co (Signed original) (tomg) [Entry date 12/29/99]

12/28/99 123 EXPERT WITNESS DISCLOSURE STATEMENT for Howard C. Merchant FILED by Defendant Union Pacific RR Co (Signed original) (tomg) [Entry date 12/29/99]

12/28/99 124 EXPERT WITNESS DISCLOSURE STATEMENT for Shawn Leppert FILED by Defendant Union Pacific RR Co (Signed original) (tomg) [Entry date 12/29/99]

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1/4/00 125 RECORD OF PROCEEDINGS before Honorable Owen M. Panter: Pretrial conference started pretrial scheduling conf set over for 1:30 1/5/00 (counsel notified) Court Rptr Amanda Essner (tomg) [Entry date 01/07/00]

1/5/00 126 RECORD OF PROCEEDINGS before Honorable Owen M. Panter: Status conference held pretrial scheduling conf set over to Thursday 1/6/00 (counsel notified) Court Rptr Dennis Grube (tomg) [Entry date 01/07/00]

1/6/00 127 RECORD OF PROCEEDINGS before Honorable Owen M. Panter: The "Uplands" and "Eastern" portions of the case have been settled. The "sediments" portion of the case is not settled and will proceed to trial. The following trial schedule is set: expert disclosures due 7/1/00; discovery ddl set for 8/1/00; pretrial order ddl set for 8/8/00; pretrial materials are due 8/18/00; pretrial conference set for 1:30 8/28/00; 3 day court trial set for 9:00 10/10/00 in Portland(Procedural Order attached). Exhibits returned to parties (counsel notified) Court Rptr Dennis Grube (tomg) [Entry date 01/10/00] [Edit date 01/14/00]

1/14/00 128 PARTIAL JUDGMENT: The claims dealing with the "Uplands" and "Eastern" portions of plaintiff's property are dismissed with prejudice. No costs are awarded to either party. Signed 1/13/00 microfilmed 1/14/00 Honorable Owen M. Panner (counsel notified) (tomg)

1/26/00 129 TRANSCRIPT of 1/6/00 before Honorable Owen M. Panner court reporter: Dennis Grube (tomg)

3/10/00 130 MOTION by Plaintiff Port of Portland TO EXTEND DISCOVERY AND PRETRIAL ORDER DEADLINES (tomg)

3/10/00 131 MEMORANDUM IN SUPPORT by Plaintiff Port of Portland of MOTION TO EXTEND DISCOVERY AND PRETRIAL ORDER DEADLINES [130-1] (tomg)

3/10/00 132 AFFIDAVIT by Plaintiff Port of Portland of Trey Harbert re: MOTION TO EXTEND DISCOVERY AND PRETRIAL ORDER DEADLINES [130-1] (tomg)

3/10/00 133 CERTIFICATE OF SERVICE of affidavit [132-1], memorandum [131-1], MOTION TO EXTEND DISCOVERY AND PRETRIAL ORDER DEADLINES [130-1] by Plaintiff Port of Portland (tomg)

3/15/00 134 RECORD OF PROCEEDINGS before Honorable Owen M. Panner DENYING PLAINTIFF'S MOTION TO EXTEND DISCOVERY AND PRETRIAL ORDER DEADLINES [130-1] (counsel notified) Court Rptr Liz (tomg) [Entry date 03/16/00]

3/20/00 135 SECOND AMENDED ANSWER [1-2] and COUNTER-CLAIM by Defendant Union Pacific RR Co against Plaintiff Port of Portland; cntdft Union Pacific RR Co (tomg) [Entry date 03/22/00]

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5/24/00 136 RECORD OF ORDER by Honorable Owen M. Panner SETTING telephone conference for 11:30am on 6/8/00 re letter request to change trial date (counsel notified) Court Rptr none (tely) [Entry date 05/25/00]

6/7/00 137 STIPULATED MOTION by Defendant Union Pacific RR Co TO EXTEND TIME TO 6/30/00 TO RESPOND BY ANSWER OR OBJECTION TO PLAINTIFF'S 2ND SET OF INTERROGATORIES & REQUEST FOR PRODUCTION (tely)

6/8/00 138 RECORD OF ORDER by Honorable Owen M. Panner GRANTING

stipulated MOTION TO EXTEND TIME TO 6/30/00 TO RESPOND BY ANSWER OR OBJECTION TO PLAINTIFF'S 2ND SET OF INTERROGATORIES & REQUEST FOR PRODUCTION [137-1] (counsel notified) Court Rptr none (tely) [Entry date 06/09/00]

6/8/00 139 RECORD OF PROCEEDINGS Of Telephone Conference before Honorable Owen M. Panner Parties letter request to change trial date is Granted. ORDER resetting 5 day court trial to 9:00 am on 11/7/00 in Portland; Pretrial documents due 9/18/00; Pretrial conference previously set for 8/28/00 at 1:30pm remains in place but will be a status conference (counsel notified) Court Rptr Liz Kauble (tely) [Entry date 06/09/00]

6/20/00 140 RECORD OF ORDER by Honorable Owen M. Panner pursuant to the stipulation of counsel, the Court establishes the following deadlines: expert disclosure due 8/1/00; discovery ddl set for 9/1/00 ; pretrial order ddl set for 9/8/00; Pretrial materials ddl set for 9/18/00; pretrial conference reset to 10/23/00 & pretrial conference previously set for 8/28/00 at 1:30pm remains in place as a status conference (counsel notified) Court Rptr none (tely) [Entry date 06/22/00]

7/17/00 141 RECORD OF ORDER by Honorable Owen M. Panner: Modifying schedule set forth in minute order of 6/20/00: Expert disclosures due 8/14/00; Discovery due 9/14/00; Pretrial Order due 9/22/00; Pretrial documents due 10/2/00 (counsel notified) (kirk) [Entry date 07/19/00]

8/22/00 142 THIRD AMENDED ANSWER & COUNTERCLAIM by Defendant Union Pacific RR Co (kirk) [Entry date 08/23/00]

8/22/00 143 MOTION by Defendant Union Pacific RR Co TO STRIKE EXPERT WITNESS DISCLOSURE STATEMENTS OF PAUL D. FAHRENTHOLD & BETSY STRIPLIN (Oral Argument Requested) (kirk) [Entry date 08/25/00]

8/22/00 144 MEMORANDUM OF LAW IN SUPPORT by Defendant Union Pacific RR Co of MOTION TO STRIKE EXPERT WITNESS DISCLOSURE STATEMENTS OF PAUL D. FAHRENTHOLD & BETSY STRIPLIN [143-1] (kirk) [Entry date 08/25/00]

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8/22/00 145 AFFIDAVIT by Defendant of Lee C. Nusich in Support of MOTION TO STRIKE EXPERT WITNESS DISCLOSURE STATEMENTS OF

PAUL D. FAHRENTHOLD & BETSY STRIPLIN [143-1] (kirk)
[Entry date 08/25/00]

8/28/00 146 RECORD OF PROCEEDINGS (Motion Hearing) before Honorable Owen M. Panner: DENYING Defendants MOTION TO STRIKE EXPERT WITNESS DISCLOSURE STATEMENTS OF PAUL D. FAHRENTHOLD & BETSY STRIPLIN [143-1]; ORDER setting the following case schedule: Discovery closes 10/23/00; Pretrial materials due 11/13/00; Pretrial Conference set for 1:30pm on 12/4/00 & 4-Day Court Trial set to commence at 9:00am on 1/30/01 in Portland (counsel notified) Court Rptr : Robert Stimler (kirk) [Entry date 08/30/00]

8/29/00 147 ORDER ESTABLISHING TRIAL DATE & PROCEDURES by Honorable Owen M. Panner; Signed 8/29/00; (See formal 4-Page Order) (counsel notified) (kirk) [Entry date 08/30/00]

9/22/00 -- LODGED PRETRIAL ORDER (kirk) [Entry date 09/27/00]

10/23/00 148 JOINT MOTION filed by Defendant Union Pacific RR Co TO EXTEND DEADLINE FOR SUBMISSION OF PRE-TRIAL MATERIALS (kirk) [Entry date 10/24/00]

[END OF DOCKET: 3:98cv886]

